

SEP 23 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of

Accelerated Docket for Complaint
Proceedings

*BellSouth's "Petition for Reconsideration
and Clarification"*

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CC Docket No. 96-238

COMMENTS OF
SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC") respectfully files these comments in response to BellSouth Corporation's ("BellSouth") "Petition for Reconsideration and Clarification." These comments are submitted on behalf of SBC and on behalf of each of its BOC subsidiaries, Nevada Bell, Pacific Bell, and Southwestern Bell Telephone Company.

ARGUMENT

SBC adopts and supports BellSouth's positions in its petition. SBC is concerned that, in the its haste to meet statutory deadlines and to accelerate the complaint process, the Commission not sacrifice fundamental fairness or — more seriously — constitutional due process. There will be some complaint matters that will be suited to the newly adopted accelerated procedures. Others, however, will not. It is the ones that will not be suited to these procedures that most concern SBC. The following comments are in addition to those made by BellSouth.

A. Automatic Document Production.

In some small cases, the so-called "automatic" document production may not be onerous. In large cases, it will be. Regardless, for large corporate entities, whether the case is large or small, this automatic document production will always be fraught with danger. It will be extremely difficult, if not impossible, for larger corporate entities to know whether they have fully complied with this discovery rule by the deadline for production. Given the structure of such entities, it is not infrequent that, even under other rules in other forums that provide more time to produce documents, documents and other tangible things are not timely produced and production has to be supplemented. Often this inadvertent failure to timely produce is viewed with suspicion, and the opposing party seeks sanctions. It is frequently difficult to determine whether non-production was truly inadvertent or purposeful.

Because of this and in light of the Commission's own admonition that "swift and effective sanctions will be necessary to ensure against attempts to prolong Accelerated Docket proceedings through discovery delay or abuse,"¹ SBC anticipates that serious sanctions await corporate entities that inadvertently failed to disclose relevant documents and other tangible things.² SBC believes that it is better to give the parties sufficient time to produce the relevant documents and other tangible things and thereby significantly reduce the chances of inadvertent non-production. Moreover, SBC urges the adoption of the federal-district-court discovery

¹ *In the Matter of Implementation of the Telecommunications Act of 1996, Second Report and Order*, FCC No. 98-154, CC Docket No. 96-238, ¶ 65 (Released July 14, 1998).

² These sanctions could include denying or limiting discovery and/or excluding evidence. *Id.*

standard — the relevant-to-disputed-facts standard — in lieu of the Commission's likely-to-bear standard.

B. Ex Parte Rules.

The Commission's finding that its new Accelerated Docket proceedings won't offend the Commission's *ex parte* rules is without merit. Even beyond BellSouth's valid points and any due process considerations, the finding is unwise. Like the Commission's decision to require staff-supervised settlement discussions, this finding undermines the process itself. Settlement discussions should encourage freewheeling and frank discussions between the parties. The Commission's decision to have the finder-of-fact — the staff — supervise those discussions will require parties to hold back, fearing that such discussions would adversely impact the findings of fact.

Likewise, the Commission's decision with respect to the *ex parte* rules will corrode confidence in the proceedings. One party — most likely the defendant — will fear that the matter has already been resolved against his or her interests in those *ex parte* discussions. It is the appearance of impropriety that ought to concern the Commission. The hallmark of the Accelerated Docket or any other docket should be confidence in the process itself. This finding and the resulting appearance jeopardize that confidence.

C. Extensions of Time.

SBC believes the Accelerated Dockets should be the most flexible proceedings. Time constraints would seem to argue against flexibility; yet the speed of the process is supposed to

serve the needs of the parties. It should not be a case of speed for speed's sake. Granting extensions of time, especially for conflicts in the schedules of witnesses and attorneys, is critical.

In creating the Accelerated Docket, the Commission has created a proceeding that will pop up in the middle of everyone's calendar without notice. Other matters — especially state commission proceedings and trials — that have been scheduled for months will be affected. The resources of the common carriers are far from infinite, especially in this era of competition. If the Accelerated Document lacks the flexibility to make room for these long-standing scheduled events, then justice will not be served in either.

CONCLUSION

SBC respectfully requests that the Commission grant BellSouth's petition for the reasons set forth in the original petition and in these comments.

Respectfully submitted,

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
William A. Brown

September 23, 1998

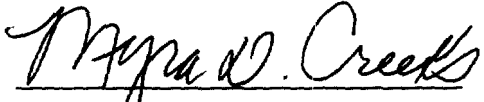
By: 
William A. Brown

One Bell Plaza, 30th Floor
P. O. Box 655521
Dallas, TX 75265-5521
(214) 464-3454

ATTORNEYS FOR
SBC COMMUNICATIONS INC.,
NEVADA BELL, PACIFIC BELL, and
SOUTHWESTERN BELL TELEPHONE
COMPANY

CERTIFICATE OF SERVICE

I, Myra D. Creeks, hereby certify that the foregoing,
"Comments of SBC Communications, Inc.," in CC Docket No. 96-238,
has been filed this 23rd day of September 1998, to the Parties of Record.


Myra D. Creeks

September 23, 1998

ITS INC
1231 20th STREET NW
WASHINGTON DC 20036

COMMON CARRIER BUREAU
ENFORCEMENT TASK FORCE
1919 M STREET NW, ROOM 650-L
WASHINGTON DC 20554
(2 COPIES)

COMMON CARRIER BUREAU
ENFORCEMENT DIVISION
FEDERAL COMMUNICATIONS COMMISSION
2025 M STREET NW, ROOM 6120
WASHINGTON DC 20554

MARK C ROSENBLUM
AT&T
295 NORTH MAPLE AVE
BASKING RIDGE NJ 07920

GENEVIEVE MORELLI
EXECUTIVE VICE PRESIDENT AND
GENERAL COUNSEL
COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION
1900 M STREET NW SUITE 800
WASHINGTON DC 20036

ALBERT H KRAMER
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
COUNSEL FOR ICG TELECOM GROUP AND
AMERICAN PUBLIC COMMUNICATIONS
COUNCIL
2101 L STREET NW
WASHINGTON DC 20037-1526

FRANK W KROGH
MCI TELECOMMUNICATIONS CORPORATION
1801 PENNSYLVANIA AVE NW
WASHINGTON DC 20006

TERESA MARRERO
SENIOR REGULATORY COUNSEL
TELEPORT COMMUNICATIONS GROUP INC
TWO TELEPORT DRIVE
STATEN ISLAND NY 10311

ANDREW D LIPMAN
SWIDLER & BERLIN CHTD
COUNSEL FOR MFS COMMUNICATIONS CO
3000 K STREET NW STE 300
WASHINGTON DC 20007

CHARLES C HUNTER
HUNTER & MOW PC
COUNSEL FOR TELECOMMUNICATIONS
RESELLERS ASSOCIATION
1620 I STREET NW STE 701
WASHINGTON DC 20006

MARY MCDERMOTT
LINDA KENT
UNITED STATES TELEPHONE ASSOCIATION
1401 H STREET NW STE 600
WASHINGTON DC 20005

RUSSELL M BLAU
MELISSA B ROGERS
SWIDLER & BERLIN CHTD.
COUNSEL FOR KMC TELECOM INC
3000 K STREET NW STE 300
WASHINGTON DC 20007

FRANK MOORE
SMITH BUCKLIN & ASSOCIATES
GOVERNMENT AFFAIRS DIVISION
COUNSEL FOR ATSI
1200 19TH ST NW
WASHINGTON DC 20036

GERALD M ZUCKERMAN
COMMUNICATIONS AND ENERGY
DISPUTE RESOLUTION ASSOCIATES
INTERNATIONAL SQUARE
1825 I STREET NW SUITE 400
WASHINGTON DC 20006

CHARLES H HELEIN
HELEIN & ASSOCIATES PC
COUNSEL FOR AMERICA'S CARRIERS
TELECOMMUNICATIONS ASSOCIATION
8180 GREENSBORO DRIVE STE 700
MCLEAN VA 22102

ROBERT B MCKENNA
U S WEST INC
1020 19TH ST NW STE 700
WASHINGTON DC 20036

FRANK MICHAEL PANEK
AMERITECH
2000 WEST AMERITECH CENTER DRIVE
ROOM 4H84
HOFFMAN ESTATES IL 60196-1025

GENE A BECHTEL
BECHTEL & COLE CHTD
1901 L STREET NW STE 250
WASHINGTON DC 20036

DOUGLAS E HART
FROST & JACOBS LLP
201 EAST FIFTH STREET
2500 PNC CENTER
CINCINNATI OH 45202

LEON M KESTENBAUM
H RICHARD JUHNKE
SPRINT COMMUNICATIONS INC
1850 M STREET NW 11TH FL
WASHINGTON DC 20036

RICHARD C BARTEL
COMMUNICATIONS VENTURE SERVICES INC
5530 WISCONSIN AVE STE 703-5
CHEVY CHASE MD 20815

RICHARD L CYS
DAVID WRIGHT TREMAINE
COUNSEL FOR NEXTLINK COMMUNICATIONS
1155 CONNECTICUT AVE NW STE 700
WASHINGTON DC 20036

M ROBERT SUTHERLAND
BELLSOUTH
1155 PEACHTREE ST NE
SUITE 1700
ATLANTA GEORGIA 30309-3610

JOSEPH DIBELLA
THE NYNEX TELEPHONE COMPANIES
1300 I STREET NW STE 400 WEST
WASHINGTON DC 20005

MARLIN D ARD
LUCILLE M MATES
COUNSEL FOR PACIFIC TELESIS GROUP
140 NEW MONTGOMERY ST RM 1529
SAN FRANCISCO CA 94105

LAWRENCE W KATZ
BELL ATLANTIC
1320 NORTH COURT HOUSE ROAD
8TH FLOOR
ARLINGTON VA 22201

GAIL POLIVY
GTE
1850 M STREET NW STE 1200
WASHINGTON DC 20036